

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TYE THOMAS,	:
	:
Plaintiff,	:
	:
v.	: Civ. No. 21-708-RGA
	:
WARDEN MAY,	:
	:
Defendant.	:

MEMORANDUM ORDER

At Wilmington, this 7th day of December, 2022;

IT IS ORDERED that Plaintiff's request for counsel (D.I. 28) is **DENIED** without prejudice to renew.

Plaintiff requests counsel on the grounds that the case is complex, there is a jury demand, the case will require discovery, there will be conflicting testimony, he has limited access to legal materials and no ability to investigate, he is housed out of state, and his claim has legal merit. (D.I. 28). A *pro se* litigant proceeding *in forma pauperis* has no constitutional or statutory right to representation by counsel. See *Brightwell v. Lehman*, 637 F.3d 187, 192 (3d Cir. 2011); *Tabron v. Grace*, 6 F.3d 147, 153 (3d Cir. 1993). However, representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff's claim has arguable merit in fact and law. *Tabron*, 6 F.3d at 155.

After passing this threshold inquiry, the Court should consider a number of factors when assessing a request for counsel. Factors to be considered by a court in deciding whether to request a lawyer to represent an indigent plaintiff include: (1) the

merits of the plaintiff's claim; (2) the plaintiff's ability to present his or her case considering his or her education, literacy, experience, and the restraints placed upon him or her by incarceration; (3) the complexity of the legal issues; (4) the degree to which factual investigation is required and the plaintiff's ability to pursue such investigation; (5) the plaintiff's capacity to retain counsel on his or her own behalf; and (6) the degree to which the case turns on credibility determinations or expert testimony. See *Montgomery v. Pinchak*, 294 F.3d 492, 498-99 (3d Cir. 2002); *Tabron*, 6 F.3d at 155-56. The list is not exhaustive, nor is any one factor determinative. *Tabron*, 6 F.3d at 157.

Having reviewed the matter, the Court finds that the issues are not complex, the parties are proceeding with discovery, and, to date, Plaintiff has adequately represented himself in this matter. Accordingly, Plaintiff's request for counsel is denied without prejudice.

/s/ Richard G. Andrews
UNITED STATES DISTRICT JUDGE